

TENNESSEE REAL ESTATE COMMISSION MINUTES

August 8, 2007

The Tennessee Real Estate Commission convened on August 8, 2007 at 9:00 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. The following **Commission Members were present: Chairman Charles Haynes, Vice Chairman William (Bear) Stephenson, Commissioner Gary Cunningham, Commissioner Isaac Northern, Commissioner Grover Collins, Commissioner Wendell Alexander, and Commissioner David Flitcroft. Commissioner Carol Tate and Commissioner Adren Greene were absent. Others Present: Eve Maxwell, Executive Director, Donna Hancock, Interim Executive Director, Ryan Bane, Staff Attorney, and Kelly McDermott, Administrative Secretary.**

The first order of business was the adoption of the agenda (**Exhibit 1**) for the August 2007 Commission meeting. Chairman Haynes wished to add to the agenda an introduction of all Commission members and staff to TREC's new Executive Director Eve Maxwell. **Commissioner Stephenson made a motion to adopt the agenda; seconded by Commissioner Northern; Motion Carried.**

The next order of business was the approval of the minutes from the July 2007 meeting (**Exhibit 2**). **Commissioner Alexander made a motion to approve the minutes from July 2007; seconded by Commissioner Stephenson; Motion Carried.**

The Commission and staff individually introduced themselves to Eve Maxwell, new Executive Director of TREC.

Informal Applicant Conferences

Terrance Lee Hall, applicant, appeared with his Principal Broker Jon Begley to request licensure as an Affiliate Broker. Mr. Hall disclosed a conviction for DWI in 1979 and a conviction for a DUI in 1989. He also disclosed a felony conviction for Conspiracy to Possess and to Distribute Cocaine in 1993. **Commissioner Collins made a motion to approve Mr. Hall's affiliate broker license; seconded by Commissioner Flitcroft; Vote: 5 Yes, 2 No; Motion Carried.**

Gabrielle Booker-Franklin, applicant, appeared with her Principal Broker Nazarene Frazier to request licensure as an Affiliate Broker. Ms. Booker-Franklin disclosed a conviction of theft over \$1000.00 in 2003. **Commissioner Northern made a motion to approve; seconded by Commissioner Flitcroft; Motion Carried.**

Justin Mayo, applicant, appeared with his Principal Broker Nancy McGrath to request licensure approval as an Affiliate Broker. Mr. Mayo disclosed a conviction for Criminal Attempt in 1991. He also disclosed a conviction of Aggravated Burglary in 1991. **Commissioner Alexander made a motion to deny; seconded by Commissioner Northern; Vote: 5 Yes to the Motion to Deny; 1 No to the Motion to Deny; Commissioner Collins abstained; Motion Carried.**

James Edward Thompson, applicant, appeared with his Principal Broker Pam Johnsen to request licensure approval for a Timeshare Salesperson license. Mr. Thompson disclosed convictions for Carrying a Pistol with Intent to Go Armed and Possession of Prescription Drugs in 1979. He also disclosed convictions for Dangerous Drugs and Burglary in 1983. **Commissioner Cunningham made a motion to approve; seconded by Commissioner Collins; Motion Carried.**

Jesse Dale McClerkin, applicant, appeared with his Principal Broker Kaye Smith to request licensure approval for an Affiliate Broker license. Mr. McClerkin disclosed a conviction for Odometer Fraud in 1992. **Commissioner Alexander made a motion to approve; seconded by Commissioner Collins; Vote: 6 Yes, 1 No, Commissioner Cunningham abstained; Motion Carried.**

James Thomas, applicant, appeared with his Principal Broker Leah Douglas-Wooten to request approval for an Affiliate Broker license. Mr. Thomas disclosed 3 convictions for Robbery in 1990. **Commissioner Northern made a motion to approve; seconded by Commissioner Collins; Motion Carried.**

Vanessa Fentress, applicant, appeared with her Principal Broker Jeffery Thomas to request approval for an Affiliate Broker license. Ms. Fentress disclosed a conviction for Facilitation of a Controlled Substance in 1995. **Commissioner Collins made a motion to approve; seconded by Vice-Chairman Stephenson; Motion Carried.** There was a discussion about the zoning of the office of Jeff Thomas Realty. **Commissioner Alexander made a motion to send an auditor to the firm to perform an audit; seconded by Vice-Chairman Stephenson; Motion Carried.**

John Geissberger, former licensee, 285243, appeared to request that the Commission consider his request for approval for an Affiliate Broker license. Mr. Geissberger also requested that the Commission consider waiving the policy that any applicant with a felony conviction may not be considered for a license until 2 years has passed since the expiration of probation. Mr. Geissberger's probation expired on January 11, 2007. Mr. Geissberger was licensed as a Timeshare Salesperson in October 2002. Mr. Geissberger failed to disclose a felony conviction for Conspiracy to Commit Copyright Infringement in April 2002. A complaint was filed against Mr. Geissberger regarding the failure to disclose the felony conviction and in response he voluntarily surrendered his Timeshare Salesperson license. Mr. Geissberger stated that he did not disclose the conviction because he believed that the conviction had been expunged. Mr. Geissberger's Principal Broker Pam Johnsen spoke on behalf of Mr. Geissberger and answered questions from the Commission regarding her role in the misrepresentation of Mr. Geissberger's Timeshare Salesperson application. **Commissioner Alexander made a motion to deny Mr. Geissberger's request; seconded by Commissioner Collins; Motion Carried.**

The Commission recessed for lunch at 11:30 a.m. and reconvened at 1:00 p.m.

Licensee/Applicant Requests

Krysty Burroughs, licensee, requested that the Commission consider her request to hold a Broker license and an Acquisition Agent license concurrently. Staff Attorney

Ryan Bane explained to the Commission that he recently received a phone call & correspondence asking if a Broker can perform the acts of an Acquisition Agent. Ryan Bane explained that an Acquisition Agent is a person who by means of personal inducement, solicitation, or otherwise attempts directly to encourage any person to attend a sales presentation for a time-share program. The City of Gatlinburg requires that any person working as an Acquisition Agent hold an identification card which can only be issued if the agent holds the Acquisition Agent license and will not issue an identification card to someone with any other license issued by TREC. Ryan Bane referred the Commission to T.C.A. 62-13-309(e) which states that "no more than one license shall be issued to any broker or affiliate broker to be in effect at any one (1) time". However, Mr. Bane explained that T.C.A. 62-13-309 refers to Business Locations. His opinion is that there is not a conflict with a Broker performing the duties of an Acquisition agent. **Commissioner Alexander made a motion that (1) a Broker or an Affiliate Broker be allowed to perform the acts of an Acquisition Agent or (2) if the city requires that an agent have an Acquisition Agent license to receive the identification card, then a Broker or an Affiliate Broker may also hold an Acquisition Agent license; (3) no examination will be required to receive the additional Acquisition Agent license; (4) legal staff will draft a Policy Statement for adoption; seconded by Vice-Chairman Stephenson; Motion Carried.**

Commissioner Northern asked Ryan Bane if a Principal Broker can manage more than one firm. Ryan Bane advised that a Principal Broker may be the Principal Broker of more than one firm if the firms are at the same physical location. Mr. Bane suggested that a Policy Statement could be created to give Principal Brokers a policy to reference. Ryan Bane referenced TCA 62-13-309 (Business Locations) when citing that there is no prohibition against one Principal Broker being managing broker at more than one firm at the same location. **Commissioner Alexander made a motion to create a Policy Statement stating that there is no prohibition against a Principal Broker managing 2 firms at the same location; seconded by Commissioner Northern; Motion Carried.**

The following licensees/applicants requested a waiver of the 50-mile rule:

- **Michael Emmett Gober, licensee 310448**
- **Mychel Dillard, applicant 313879**
- **Brian Richard Groat, applicant 313899**
- **Brian Edward Howard, applicant 313949**
- **Gino Alphonso Taliento, applicant 313947**
- **Jonathan James Hitchler, applicant 313948**
- **Melissa Gail Walton, applicant 313901**
- **Amy Mandell Kemble, applicant 313900**
- **Neshat "Emily" Ershadi, applicant 313946**
- **Wendell Allen Barnhill, applicant 313898**
- **Billi "BJ" Jo Suiter, licensee 310322**
- **Mitzi Mayer, licensee 291723**
- **Stephanie Napier, licensee 267864**

Commissioner Alexander made a motion to approve all of the requests a waiver to the 50-mile rule; seconded by Vice-Chairman Stephenson; Commissioner Flitcroft abstained; Motion Carried.

Education Report: Dr. Kathy Riggs, Education Director

There was a brief discussion of possible nominees for the Tune Award. **Commissioner Alexander made a motion to defer any further discussion of the Tune Award until the September 2007 Commission meeting; seconded by Vice-Chairman Stephenson; Motion Carried.**

Dr. Riggs presented courses for Commission evaluation (**Exhibit 3**). There was brief discussion about the course "Recent Nashville Area Industrial & Office Developments" taught by National Association of Industrial & Office Properties. Dr. Riggs explained the content of the course. Commissioner Collins will attend the class/tour and report back to the Commission. Commissioner Cunningham inquired if there has ever been a course offered on advertising. Dr. Riggs stated that there is no course specifically taught on advertising. Commissioner Cunningham suggested that a course taught by a qualified teacher may help keep licensees in compliance regarding advertising. **Vice-Chairman Stephenson made a motion to approve all courses; seconded by Commissioner Cunningham; Motion Carried.**

Dr. Riggs presented a letter from Kevin O'Connell of the Nashville School of Real Estate requesting that the school be allowed to teach bilingual classes. Ryan Bane advised the Commission that there is nothing in the rules or laws prohibiting bilingual classes. **After discussion, Commissioner Collins made a motion to deny approval of a class taught in a language other than English; seconded by Commissioner Cunningham; Commissioner Northern abstained; Motion Carried.**

Mr. Bobby Sain was scheduled to appear before the Commission to discuss the pros and cons of a two year mandatory E&O insurance policy. Mr. Sain did not appear due to a scheduling misunderstanding with TREC staff.

The Commission readdressed the issue of a Principal Broker managing more than one firm at one location. There had been previous discussion regarding how many firms one Principal Broker may manage at the same location. Mr. Bane advised the Commission that there is not rule or law prohibiting a Principal Broker from managing more than 2 firms at the same location.

Ms. Tricia Clark, an educator and attendee at the meeting, addressed the Commission regarding the bilingual class presented to the Commission during the Education Report. She stated that she feels that it would not benefit a student to take the class in a foreign language if they test is administered in English.

Executive Director's Report - Donna Hancock, Interim Executive Director

Ms. Maxwell and Ms. Hancock presented the following information to the Commission for review:

- **Policy discussion for E&O non-compliance** – Ms. Hancock explained to the Commission the progress staff has made in issuing Agreed Citations to Principal Brokers at firms where licensees have expired E&O Insurance. According to a recently requested report by staff, there are 744 licensees who are not insured. There was a discussion between staff and the Commission members regarding how to proceed administratively to enforce Policy # 07-002 adopted at the July 2007 Commission meeting. Staff explained that they are working with Information Systems to obtain an accurate database so as to penalize only those Principal Brokers that are in non-compliance.
- **Complaint Statistics Report (Exhibit 6)** – TREC has a total of **462** open complaints. However, 96 of the 462 open complaints were staff generated Agreed Citations. There are 45 new complaints since the July meeting. There are 407 complaints in the legal department and 55 open complaints in the TREC office awaiting response. The total number of closed complaints for the current Fiscal Year 2007-2008 is 25. Total Civil Penalties paid in July 2007 were \$10,850.00.

Chairman Haynes wants the legal staff to address the 96 licensees with outstanding agreed citations by setting formal hearings for the most egregious violators.

Commissioner Alexander made a motion that if a licensee does not address their Agreed Citation within 30 days, then after 60 additional days, the licensee will be brought in for a formal hearing with the Commission; seconded by Vice-Chairman Stephenson; Motion Carried.

Chairman Haynes suggested that an extended Commission meeting be held to hold formal hearings. A four or five day Commission meeting could possibly be held to address the most egregious violators.

Chairman Haynes suggested that the auditors be brought in to meet with the Commission regarding audit protocol and procedure.

- **Discussion of East Tennessee Commission meeting & Longevity Award Program** Chairman Haynes advised that First Tennessee will not be sponsoring the Longevity Breakfast. He suggested that Commissioners from each region attempt to secure a regional sponsor for the events in Knoxville, Nashville, and Memphis. Ms. Hancock explained that the sponsor must be a private entity. A Realtors association cannot fund the event because they employ a lobbyist for the real estate industry and they do not represent all licensees in the state of TN. The event must be open to the public. The legal department will investigate if Commission members can legally underwrite the longevity breakfast with their own money. The Tennessee Real Estate Commission cannot send out the invitations for the event. The sponsor(s) will be provided with a list of names and addresses and the certificates and must send out the invitations. Ms. McDermott advised the Commission that Commissioner Flitcroft has secured a meeting room for the

October Commission meeting at the Supreme Court building in Knoxville. The breakfast will be held at Rothchild's on the morning of October 3, 2007. Chairman Haynes also wants legal to investigate if the Commission can send out the invitations instead of the sponsor.

- **E&O discussion** (revisited) - There was a discussion of those firms that did not accept the letter of warning regarding E&O delinquencies. **Commissioner Alexander made a motion that the auditors be sent to the firms with a copy of the original letter and envelope, perform a compliance audit, and obtain a copy of all E&O policies for all active licensees as of the date of the visit. The auditor should return the audit and the copies of E&O coverage to TREC and at that time an Agreed Citation will be issued for uninsured licensees or any other violation discovered during the audit; seconded by Commission Flitcroft; Motion Carried.**

Commissioner Alexander made a motion that auditors check for E&O documents/compliance at all future audits; seconded by Commissioner Collins; Motion Carried.

Commissioner Collins suggested that Principal Brokers first be advised that they must keep a copy of all licensees E&O policies in the office for review.

Commissioner Alexander made a motion that his previous motion regarding auditors checking E&O at all future audits not be enforced until the Commission meets with the auditors to discuss audit protocol; seconded by Commissioner Collins; Motion Carried.

There was a discussion regarding what information Rice Insurance may supply to help TREC administer Policy # 07-002.

The Commission adjourned for the day at 4:15 p.m.

TENNESSEE REAL ESTATE COMMISSION MINUTES August 9, 2007

The Tennessee Real Estate Commission reconvened on August 9, 2007 at 9:00 a.m., in Room 160, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. **The following Commission Members were present: Chairman Charles Haynes, Commissioner Gary Cunningham, Commissioner Grover Collins, Commissioner Wendell Alexander, Commissioner Issac Northern, and Commissioner David Flitcroft. Vice-Chairman William (Bear) Stephenson, Commissioner Adren Greene, and Commissioner Carol Tate were absent. Others present: Eve Maxwell, Executive Director, Donna Hancock, Interim Executive Director, Ryan Bane, Staff Attorney and Kelly McDermott, Administrative Secretary.**

The first order of business was the presentation of the legal report by Staff Attorney, Ryan Bane.

Legal Report, Ryan Bane, Staff Attorney (Exhibit 9)

- **2006031741- Commissioner Northern made a motion to dismiss; seconded by Commissioner Alexander; Motion Carried.**
- **20060324041 – Commissioner Cunningham made a motion to dismiss; seconded by Commissioner Northern; Motion Carried.**
- **2006042373 & 2006042372 & 2006042371– Commissioner Cunningham made a motion to issue a Consent Order to the broker for \$250.00 for an advertising violation; seconded by Commissioner Flitcroft; Motion opened for discussion; Commissioner Collins made a motion to amend the motion and send a Consent Order to the broker for \$1000.00 for an advertising violation; seconded by Commissioner Alexander; Motion as Amended Carried 3/2; Commissioner Northern & Commissioner Cunningham voted no; Original Motion Carried 4/1; Commissioner Cunningham voted no.**
- **2006032051 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Collins; Motion Carried.**
- **2006030451 – Commissioner Flitcroft made a motion to dismiss; seconded by Commissioner Northern; Motion Carried.**
- **2006036982 & 2006036981 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Alexander; Motion Carried.**
- **2006036454 & 2006036453 & 2006036452 & 2006036451 – Commissioner Alexander made a motion to send a Letter of Warning to the listing agent, the buyer's agent, and the buyer's broker and dismiss at to the uninvolved firm. Additionally, they will be issued an Agreed Citation stating that they must attend a two day Commission meeting or complete 16 hours contract writing courses within 90 days or a formal hearing; seconded by Commissioner Flitcroft; Motion Carried. Commissioner Flitcroft stated that he believes that anytime a Letter of Warning is sent that an Agreed Citation will be sent stating that they must attend a two day Commission meeting or complete 16 hours of continuing education selected by the Commission.**
- **2006031371 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Northern; Motion Carried.**
- **2006034273 & 2006034272 & 2006034271 – Commissioner Flitcroft made a motion to close pending outcome of litigation; seconded by Commissioner Northern; Motion Carried.**

- **2006030371 – Commissioner Northern made a motion to dismiss; seconded by Commissioner Collins; Motion Carried.**
- **2006040691 – Commissioner Cunningham made a motion to dismiss; seconded by Commissioner Collins; Motion Carried.**
- **2006040651 – Commissioner Collins made a motion to send a Letter of Warning; seconded by Commission Northern; Commissioner Flitcroft made a friendly amendment to also send an Agreed Citation stating that they must attend a two day Commission meeting or complete 16 hours contract writing courses within 90 days or they may appear for a formal hearing; seconded by Commissioner Collins; Commissioner Cunningham made an additional friendly amendment to issue a Consent Order to the facilitator for \$250.00; seconded by Commissioner Flitcroft; Motion Carried.**
- **2006033732 & 2006033731 - Commissioner Collins made a motion to dismiss; seconded by Commissioner Cunningham; Motion Carried.**
- **2006040361 – Commissioner Cunningham made a motion to dismiss; seconded by Commissioner Alexander; Motion Carried.**
- **2006013441 – Commissioner Alexander made a motion to initiate a complaint against the listing Principal Broker and issue a Consent Order for \$5,000.00 for lack of supervision or he/she may appear for a formal hearing. The listing agent may voluntarily surrender his/her license or appear for a formal hearing; seconded by Commissioner Flitcroft; Motion Carried with a 4/2 vote; Commissioner Collins and Commissioner Northern voted no.**
- **2006037002 & 2006037001 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Flitcroft; Commissioner Alexander abstained; Motion Carried.**
- **2006040431 – Commissioner Collins made a motion to dismiss; seconded by Commissioner Northern; Commissioner Alexander abstained; Motion Carried.**
- **2006035981 - Commissioner Cunningham made a motion to dismiss; seconded by Commissioner Northern; Motion Carried.**
- **2006036711 – Commissioner Alexander made a motion to dismiss; seconded by Commissioner Northern; Motion Carried.**
- **2006033812 & 2006033811 - Commissioner Flitcroft made a motion to defer until the September 2007 Commission meeting; seconded by Commissioner Northern; Motion Carried.**

- **2006044031 – Commissioner Northern made a motion to close the complaint and flag the file to address if reapplication occurs; seconded by Commissioner Collins; Motion Carried.**
- **2006041241 – Commissioner Alexander made a motion to send a Letter of Warning to the buyer's agent. Additionally, he/she will be issued an Agreed Citation stating that they must attend a two day Commission meeting or complete 16 hours contract writing courses within 90 days or present at a formal hearing; seconded by Commissioner Collins; Motion Carried.**

Commissioner Reports

Chairman Haynes asked for a follow up on the zoning questions regarding Jeff Thomas Realty. The zoning letter from the City of Lavergne stated that the home may be used as a model home for that particular community. Staff Attorney Ryan Bane will contact the Principal Broker regarding the restrictions.

Chairman Haynes suggested the 2008 Commission meeting schedule be presented to the Commission for adoption. Ms. McDermott will prepare the schedule and present it for adoption at the September meeting.

Commissioner Cunningham addressed that there have been 45 new complaints since the July meeting and only 22 complaints were presented in the August legal report. He questioned whether additional staff will be hired to help process complaints in a timely manner. Ms. Maxwell advised the Commission that an advertisement for a new staff member has been run and interviews will begin soon. Chairman Haynes suggested that the Commission hold extended Commission meetings in order to hold Formal Hearings. Ms. Maxwell will be working with the legal staff to create an administrative plan to process complaints more efficiently. Commissioner Cunningham also complemented the staff on their hard work.

The Commissioner revisited the discussion of the E&O policy. **Commissioner Flitcroft made a motion that TREC delay implementation of the E&O policy until September 2, 2007. If the licensees come into compliance before September 2, 2007, the Principal Broker will not be fined; seconded by Commissioner Cunningham; Motion opened to discussion; Commissioner Collins made a motion to amend the compliance date to August 15, 2007; seconded by Commissioner Northern; Motion opened to discussion; Staff advised the Commission that it will not be possible to work with Information Systems and receive correct data before August 15, 2007; Commissioner Collins withdrew his motion; Commissioner Northern withdrew his second; Motion opened to discussion; Original motion to delay implementation of the E&O policy until September 2, 2007 Carried by a vote of 5/1; Chairman Haynes voted no.**

There was a brief discussion regarding the procedure for entering E&O insurance when an agent transfers offices. Staff advised the Commission that whenever an agent transfers to a new firm, proof of new E&O is required before the transfer will be completed.

Chairman Haynes suggested that a possible statutory change be made to mandate that all licensees must insure with the state mandated insurance provider.

Commissioner Northern brought up the issue of Mississippi not honoring our reciprocity agreement because of TREC's E&O policy requiring a two year E&O policy. He asked if Mr. Robert Praytor, Executive Director of the Mississippi Real Estate Commission, had been in contact with TREC. Ms. Hancock advised the Commission that Cindy Rice Grissom had sent a letter advising her of the issue and that she had not heard from Robert Praytor, and she will contact Mr. Praytor and attempt to resolve the issue. Ms. Hancock has not heard back from Ms. Grissom since that conversation. Commissioner Northern welcomed Ms. Maxwell and thanked Ms. Hancock for her service to TREC.

Commissioner Flitcroft asked that staff investigate why Chairman Haynes and Vice-Chairman Haynes have not been reimbursed for the ARELLO Canadian trip.

Commissioner Collins reported that he was speaking with members of the Tennessee Association of Realtors and there have been some recommendations that Realtors be required to perform an apprenticeship. He also wanted to know if there is way to limit the number of transfers an agent can make in a year. Chairman Haynes suggested that although we cannot limit the number of transfers, the transfer fee could be increased to dissuade agents from frequent transfers. Ryan Bane advised the Commission that they can increase their fees but a fee change would require Rule Making.

Commissioner Alexander thanked Ms. Hancock for her service. Commissioner Alexander asked Ms. Maxwell to set up a time for the auditors to come in and meet with the Commission in order to exchange ideas and get feedback.

Chairman Haynes thanked Ms. Hancock for her service to TREC and again welcomed Ms. Maxwell to the division.

Commissioner Alexander congratulated his fellow Commissioners for their professionalism.

Chairman Haynes made a brief report on the ARELLO Conference in New Orleans.

Commissioner Cunningham asked if the legal department will move forward with Formal Hearings. Ryan Bane advised Commissioner Cunningham that he would arrange for Formal Hearings to be held in the near future.

Comments from Attendees

Chairman Haynes called for comments from the attendees.

Licensees who attended the Commission meeting in order to obtain continuing education credits appeared before the Commission and gave statements regarding what they had learned from the meeting.

Chairman Haynes adjourned the Commission Meeting August 9, 2007 at 11:50 a.m.